





Report to the Auburn City Council

Action Item

Agenda Item No. **5**

 City Manager Approval

To: Mayor and City Council Members

From: Bernie Schroeder, Director of Public Works 
 Megan Siren, Administrative Analyst/Transit Manager 

Date: May 23, 2011

Subject: 2011 Placer County Air Pollution Control District Clean Air Grant Contract – Auburn Transit Guide Update Project

The Issue

Shall the City sign and execute a Contract with the Placer County Air Pollution Control District for the Clean Air Grant for the Auburn Transit Guide Update Project.

Conclusion and Recommendation

Staff recommends that City Council by **RESOLUTION**, authorize the Director of Public Works to sign and execute the Clean Air Grant Contract No. CN025352 with the Placer County Air Pollution Control District for the Auburn Transit Guide Update Project.

Background

The Public Works Department applied for the 2011 Clean Air Grant through the Placer County Air Pollution Control District (PCAPCD) for the Auburn Transit Guide Update Project. The project details include designing and updating the Auburn Transit brochure to provide transit related information in a clear and concise format. The grant funding includes printing of the new brochures.

The PCAPCD Board approved the grant application at their April Board meeting for funding in the amount of \$6,500. Staff estimated the total cost of the project to be \$7,500. Staff will utilize available resources to stay within the awarded funds. The project will promote and encourage public transportation within the City of Auburn.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation

Fiscal Impact

The proposed 2010/2011 Fiscal year budget will incorporate the Auburn Transit Guide Update Project within the Transit Budget (Fund 27).

Attachment: 2011 Clean Air Grant Contract

Agreement Number CN025352

DESCRIPTION: CITY OF AUBURN'S TRANSIT GUIDE UPDATE

This AGREEMENT is between the Placer County Air Pollution Control District (hereinafter "PCAPCD") and The City of Auburn, (hereinafter "CONTRACTOR").

RECITALS

WHEREAS, under AB 2766 and AB 923 (Health and Safety Code Section 44220 and 44225 *et. seq.*), the PCAPCD has levied a \$6.00 fee on motor vehicles registered within the PCAPCD; and

WHEREAS, the PCAPCD has received Air Quality Mitigation Funds to off-set the impact of new development in Placer County by reducing emissions, primarily ozone precursor emissions, from sources that are not required by law to reduce emissions; and

WHEREAS, pursuant to AB 2766, AB 923 and the APCD's Offsite Mitigation Program, the monies collected under these levies must be used to reduce air pollution from motor vehicles and other sources, and for related air quality planning, education, air monitoring, and technical studies necessary for the implementation of the California Clean Air Act; and

WHEREAS, CONTRACTOR has requested that the PCAPCD provide Clean Air Grant monies for the PROJECT(s) described in Exhibit A, subject to the terms and conditions set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has represented to the PCAPCD that CONTRACTOR has the necessary expertise, experience and ability to competently complete the described PROJECT(s); and

WHEREAS, PCAPCD Staff has carefully reviewed the described PROJECT(s) and have found them to be within the requirements of AB 2766, AB 923 and the Offsite Mitigation Program in that the PROJECT(s) are reasonably expected to reduce air pollution and help in the further implementation of the California Clean Air Act and,

WHEREAS, the PCAPCD Board of Directors has approved Resolution #11-10, authorizing the Air Pollution Control Officer to sign and amend, as needed, grant agreements and contracts for approved projects listed in the table "PCAPCD Clean Air Projects 2011".

NOW THEREFORE, In consideration of the promises and covenants set forth herein, the parties agree as follows:

1. Contract Period

- a) The term of this contract shall begin on the date signed by both parties and conclude on or before December 31, 2012, unless terminated or amended.
- b) This contract may be canceled by either party upon serving thirty (30) days notice in writing to the other party.

2. Services

- a) CONTRACTOR agrees, during the term of this AGREEMENT, to perform the contracting services set forth below and in Exhibit "A" – Scope of Work (hereinafter "PROJECT").
- b) CONTRACTOR shall be obligated to devote as much time, attention, skill, and effort as may be reasonably required to perform the PROJECT services, in a professional and timely manner, consistent with the elements of the project.

3. Payment

- a) PCAPCD agrees to pay for the services covered by this AGREEMENT pursuant to the payment schedule set forth below and in Exhibit "B"- Payment Schedule.
- b) The amount paid to the CONTRACTOR shall constitute full payment for all services set forth herein. CONTRACTOR shall not be reimbursed for any additional expenses incurred beyond the maximum sum payable without prior written agreement by the PCAPCD.
- c) CONTRACTOR shall bill PCAPCD upon completion of the project and after all of the conditions for funding outlined in this AGREEMENT are met. If the project funded under this contract is performed in phases or over a period of time, then requests can be made by the CONTRACTOR for partial payment. Partial requests for payments must receive prior authorization by the PCAPCD. CONTRACTOR agrees to provide a detailed invoice to PCAPCD referencing the contract number with copies of purchase orders, signed contracts, or receipts. PCAPCD retains the right to require proof of services performed or costs incurred prior to any payment under this AGREEMENT.
- d) Notwithstanding any other terms of this AGREEMENT, no payments shall be made to CONTRACTOR until PCAPCD is satisfied that work of such value has been rendered pursuant to this AGREEMENT. However, PCAPCD shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

4. **Notices**

- a) Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, sent certified or registered and addressed to the parties as follows:

PCAPCD:
Placer County Air Pollution Control District
Attn: Air Pollution Control Officer
3091 County Center Drive, Suite 240
Auburn, CA 95603

CONTRACTOR:
Bernie Schroeder
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

- b) Any notice so delivered personally shall be deemed to be received on the date of delivery and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

5. **Obligations of PCAPCD**

- a) PCAPCD agrees to pay CONTRACTOR an amount not to exceed the requirements set forth in Exhibit B –Payment Schedule, in accordance with the requirements listed in Exhibit A, Work Statement
- b) PCAPCD shall not reimburse CONTRACTOR for any expenses incurred by CONTRACTOR in the performance of PROJECT described in Exhibit A unless such reimbursement is specifically authorized in the Payment Schedule. CONTRACTOR shall not be reimbursed for any additional expenses incurred beyond this maximum amount without prior written agreement by the PCAPCD
- c) Except for the payment obligations set forth above, PCAPCD shall have no other obligations or responsibilities to CONTRACTOR under this AGREEMENT

6. **Obligations of CONTRACTOR**

- a) CONTRACTOR has or will obtain all additional funding set forth in Exhibit B of this AGREEMENT
- b) CONTRACTOR has or will obtain all required licenses, permits, fees, and other legal authorizations from all applicable Federal, State, and local

jurisdictions necessary to commence and properly complete, in a professional manner, the PROJECT described in Exhibit A

- c) Labor, equipment, material, supply costs and other charges will be in conformance with the requirements of Exhibit B
- d) No component of the monies to be paid by PCAPCD to CONTRACTOR will be used for grant administration or any interest costs
- e) CONTRACTOR shall provide proof of PROJECT completion and verification of costs as set forth in Exhibit A and paragraph 3

7. **Hold Harmless/Indemnity**

The CONTRACTOR hereby agrees to protect, defend, indemnify, and hold PCAPCD free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PCAPCD arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of PCAPCD) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONTRACTOR. CONTRACTOR also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or PCAPCD or to enlarge in any way the CONTRACTOR'S liability but is intended solely to provide for indemnification of PCAPCD from liability for damages or injuries to third persons or property arising from CONTRACTOR'S performance pursuant to this contract or agreement.

As used above, the term PCAPCD means PCAPCD or its officers, agents, employees, and volunteers.

8. **Insurance Requirements**

It is recognized that CONTRACTOR is a self insured public agency, and as such provides coverage for General Liability, and Worker's Compensation. CONTRACTOR shall maintain said insurance in full force and effect during the term of this contract.

9. **Facilities, Equipment and Other Materials**

Except as set forth herein CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this AGREEMENT. PCAPCD shall furnish

CONTRACTOR only those facilities, equipment, and other materials, and shall perform only those obligations as listed herein.

10. Non-Discrimination

CONTRACTOR shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, sexual preference, or in contravention of any other protected classification or practice identified in the California Fair Employment and Housing Act; Government Code section 12900 et seq.

11. Records and Documents

- a) CONTRACTOR shall maintain at all times complete, detailed records with regard to work performed under this AGREEMENT, in a form acceptable to PCAPCD, and PCAPCD shall have the right to inspect such records at any reasonable time.
- b) CONTRACTOR agrees to return to PCAPCD, upon termination of this AGREEMENT, all documents, drawings, photographs, and other written or graphic material, however produced, received from PCAPCD and used by CONTRACTOR in the performance of its services. All work papers, drawings, internal memoranda, graphics, photographs, and any written or graphic material, however produced, prepared by CONTRACTOR in connection with its performance of services hereunder shall be, and shall remain after termination of this AGREEMENT, the property of PCAPCD and may be used by the PCAPCD for any purpose whatsoever. PCAPCD agrees that any future use of documents produced by the CONTRACTOR under the terms of this contract shall be at the sole discretion of the PCAPCD and CONTRACTOR shall bear no liability for the decisions on whether and how to use such documents.

12. Independent Status

- a) CONTRACTOR shall perform this contract as an independent CONTRACTOR and not as an employee of PCAPCD. CONTRACTOR acknowledges that CONTRACTOR is not entitled to any of the PCAPCD's fringe benefits, including without limitation; paid holidays, life insurance, sick leave, or travel or any other expenses in connection with services performed hereunder. No part of the compensation payable to CONTRACTOR hereunder shall be deducted or withheld for payment of Federal or State income or other employment related taxes. It shall be the responsibility of CONTRACTOR to provide all coverage necessary for CONTRACTOR'S own benefit and not as an employee of PCAPCD.
- b) Except as PCAPCD may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of PCAPCD in any capacity

whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this AGREEMENT to bind PCAPCD to any obligation

13. Warranties

CONTRACTOR warrants that its services are performed, with the usual thoroughness and competence; in accordance with the standard for professional services at the time those services are rendered.

14. Licenses, Permits, Etc

CONTRACTOR represents and warrants to PCAPCD that it has or will obtain before initiation of the PROJECT, all licenses, permits, qualifications, and approvals of whatever nature, which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to PCAPCD that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this AGREEMENT, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

15. Assignment or Transfer

CONTRACTOR may assign any of its rights, burdens, duties, or obligations under this AGREEMENT only upon the prior written consent of PCAPCD. Approval will be at the sole discretion of PCAPCD.

16. Modification of Agreement

This AGREEMENT cannot be changed or supplemented orally, and may be modified or superseded only by written instrument executed by all parties.

17. Waiver

One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this AGREEMENT shall not operate as a waiver of any subsequent breach or default.

18. Entirety of AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT and understanding between the parties. There are no oral understandings, terms, or conditions, and no party has relied upon any representation, express or implied, not contained in this AGREEMENT. Any prior understandings, terms, or conditions are deemed merged into this AGREEMENT. This AGREEMENT is intended as the complete and exclusive statement of the parties' Agreement pursuant to Code of Civil Procedure section 1856.

19. **Jurisdiction**

This AGREEMENT, and the right and obligations of the parties, shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this AGREEMENT, venue shall only be in the appropriate state or federal court having venue over matters arising in Placer County, California, provided that nothing in this AGREEMENT shall constitute a waiver of immunity to suit by the PCAPCD.

20. **Exhibits**

All exhibits referred to herein and attached hereto are fully incorporated by this reference.

The parties so agree.

PCAPCD:

Thomas J. Christofk
Air Pollution Control Officer

Date

CONTRACTOR:

Bernie Schroeder, Director of Public Works
City of Auburn

Date

EXHIBIT - A - WORK STATEMENT

Contract Number: CN25352

CONTRACTOR: City of Auburn

PROJECT TITLE: City of Auburn Transit Guide Update

Prior to funding CONTRACTOR shall:

1. design, print, and make available to the public an updated transit guide which includes current transit routes, maps, and general public information in order to promote and encourage the use of public transportation within the City of Auburn.
2. provide copies of invoices relative to the purchase and printing of an updated transit guide funded through this contract.
3. shall submit an original invoice to the PCAPCD, for the amount of requested grant funds for reimbursement.
4. adhere to time constraints in paragraph 3, of the AGREEMENT for encumbrance and disbursement of funds. The District may require a pre- and post-inspection in order to verify contractual requirements have been met.
5. notify the PCAPCD in writing if installation and/or implementation of this project will deviate from the scope of work outlined in the CONTRACTOR'S 2011 Clean Air Grant Application. This notification will be submitted at least 30 days in advance of any request for payment and must be approved by the APCO prior to the disbursement of any funds.
6. display on the guide that partial funding was made available from the PCAPCD. Any graphics used for this purpose will be approved in advance by District Staff.

If for any reason, after project funding, the equipment/project funded under this contract does not perform according to what was submitted in the 2011 CAG application or if the conditions of this contract are not met, the PCPACD may seek reimbursement of grant funds.

EXHIBIT B- PAYMENT SCHEDULE

To Contract Number CN025352

2011

CONTRACTOR: City of Auburn

Budget:

Amount Awarded by PCAPCD:	\$ 6,500
Estimated Co-Funding:	\$ 1,000
Estimated Total PROJECT Amount:	\$ 7,500

PROJECT Time Line:

Proposed Start Date:	June 1, 2011
Final Date to Receive Co-Funding:	N/A
Proposed End Date:	December 31, 2012

Contract Term:

The contract term of this AGREEMENT shall begin on the date signed by both parties and conclude on or before **December 31, 2012**, unless terminated or amended.

Payment:

Upon completion of the transit guide, the PCAPCD will provide up to Six Thousand Five Hundred dollars (\$6,500) in funding in accordance with the requirements listed in Exhibit A, Work Statement and Exhibit B- Payment Schedule.

1 RESOLUTION NO. 11-
2 RESOLUTION AUTHORIZING THE EXECUTION OF THE 2011 CLEAN AIR GRANT
3 CONTRACT.
4 -----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City Council of the City of Auburn does hereby authorize the
7 Director of Public Works to sign and execute the 2011 Clean Air Grant Contract
8 No. CN025352 with the Placer County Air Pollution Control District for the
9 Auburn Transit Guide Update Project.

10 A true and correct copy of said 2011 Clean Air Grant Contract is attached
11 hereto as Exhibit "A."

12 DATED: May 23, 2011

13 _____
William W. Kirby, M.D., Mayor

14 ATTEST:

15 _____
16 Joseph G. R. Labrie, City Clerk
17

18 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
19 that the foregoing resolution was duly passed at a regular session meeting of
20 the City Council of the City of Auburn held on the 23rd day of May 2011 by
the following vote on roll call:

21 Ayes:

22 Noes:

23 Absent:

24 _____
Joseph G. R. Labrie, City Clerk
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